

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TECHNICAL ANALYSIS
FOR
COMPLAINT NO. R9-2006-0048**

**SUPPORTING
ADMINISTRATIVE CIVIL LIABILITY
AGAINST
ACTIVE AUTO DISMANTLERS, INC.**

For

**FAILURE TO COMPLY WITH
MONITORING AND REPORTING REQUIREMENTS
OF ORDER NO. 97-03-DWQ**

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1. INTRODUCTION

This report provides a summary of factual evidence to support administrative imposition of \$3,000 in civil liability against Active Auto Dismantlers, Inc. for violations of monitoring and reporting requirements prescribed in State Water Resources Control Board Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAs000001, Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Permit).

2. BACKGROUND

Active Auto Dismantler's Inc. filed a Notice of Intent for coverage under the General Permit on April 20, 1998. Enrollment becomes effective on the day the Notice of Intent is submitted. The General Permit requires all enrollees to submit an annual monitoring report by July 1 of each year for the previous July 1-June 30 reporting period. Pursuant to the General Permit, dischargers are required to sample stormwater runoff twice each year. However, dischargers that participate in an approved Group Monitoring Plan are not required to perform stormwater monitoring at their facility on an annual basis. Instead monitoring is required once every two out of five years or 20% (each member of the group).

Active Auto Dismantlers, Inc. failed to submit the annual report for FY 2003/04. In addition, Active Auto Dismantlers, Inc. filed an annual report for FY 2004/05 that was misleading and, at best, inaccurate and incomplete, by reporting that they were a member of an approved group, the California Auto Dismantlers Association, and therefore not required to perform water quality monitoring of the minimum two stormwater events during the wet season. In fact, Active Auto Dismantlers, Inc. was not an active member of the group in FY 2004/05 as they reported to the Regional Board; therefore they should have conducted the two required sampling events.

3. ALLEGED VIOLATIONS

- A. Active Auto Dismantlers, Inc. failed to submit the FY 2003/04 annual monitoring report in violation of Monitoring Program and Reporting Requirement Section B.14. of Order No. 97-03-DWQ.
- B. Active Auto Dismantlers, Inc. submitted an inaccurate, incomplete, and misleading FY 2004/05 annual monitoring report in violation of Monitoring Program and Reporting Requirement Section B.5.a. of Order No. 97-03-DWQ.

4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

A. Factors to be Considered When Determining Administrative Civil Liability

The Regional Board must consider the factors required to be determined for discretionary civil penalties as described in California Water Code (CWC) §13385(e) to determine if the imposition of administrative civil liability is appropriate for the allegations addressed in this report. These factors include:

- The nature, circumstance, extent and gravity of the violation
- Whether the discharge is susceptible to cleanup or abatement
- The degree of toxicity of the discharge
- The ability to pay
- The effect on its ability to continue its business
- Any voluntary cleanup efforts undertaken
- Prior history of violation
- The degree of culpability
- Economic benefit or savings resulting from the violation
- Other matters that justice may require

A.1. Active Auto Dismantlers, Inc. failed to submit the FY 2003/04 annual monitoring report in violation of Monitoring Program and Reporting Requirement Section B.14. of Order No. 97-03-DWQ

A.1.a. Nature, Circumstance, Extent and Gravity of the Violation

Active Auto Dismantlers, Inc. failed to submit the FY 2003/04 annual monitoring report. The Regional Board record does not indicate that Active Auto Dismantlers, Inc. was issued a Notice of Violation (NOV) for the violation nor does the record indicate a reason as to why the report was not submitted.

A.1.b. Susceptibility to Cleanup and Abatement

This factor does not apply to this violation.

A.1.c. Degree of Toxicity

This factor does not apply to this violation.

A.1.d. The Ability to Pay and Ability to Continue in Business

At this time, the Regional Board has no information that Active Auto Dismantlers, Inc. is unable to pay the proposed liability or whether payment of the proposed liability would affect its ability to continue in business. While it is not anticipated that payment of the proposed administrative civil liability for violations cited in Complaint No. R9-2006-0048 would pose a significant financial hardship; Active Auto Dismantlers, Inc. has the principle burden of establishing a claim of its inability to pay.

A.1.e. Voluntary Cleanup Efforts Undertaken

This factor does not apply to this violation.

A.1.f. Prior History of Violation

Since the enrollment of Active Auto Dismantlers, Inc. for coverage under the General Permit, the Regional Board has issued NOVs for failure to submit the FY 1999/00 and FY 2000/01 annual reports. After issuance of each NOV, the reports were submitted.

Subsequently, the FY 2001/02 annual report was submitted twelve days after the July 1 due date and the FY 2002/03 annual report was submitted thirty-eight days late. In addition to the late reporting violations, Active Auto Dismantlers, Inc. submitted an incomplete FY 1998/99 annual report by not conducting the two sampling events required by the General Permit.

The Regional Board record indicates that Active Auto Dismantlers, Inc. has a poor compliance history with regards to the monitoring and reporting requirements of Order No. 97-03-DWQ.

A.1.g. Degree of Culpability

Active Auto Dismantlers, Inc. is solely responsible for compliance with the monitoring and reporting requirements of the General Permit. While the record indicates that the Regional Board did not issue a NOV in a timely manner in this instance, Active Auto Dismantlers, Inc. has shown a pattern of noncompliance with regards to the monitoring and reporting requirements of the General Order indicating that they have a high degree of culpability with regards to this violation.

A.1.h. Economic Benefit Resulting from the Violation

It is anticipated that Active Auto Dismantlers, Inc. realized little, if any, economic benefit from failing to submit the FY 2003/04 annual monitoring report because the record indicates that they were a member of a group monitoring plan and were not required to conduct stormwater sampling at the time. It is anticipated that very little cost would have been associated with filling out the forms and sending them to the Regional Board.

A.1.i. Other Matters That Justice May Require

See section A.2.i.

A.2. Active Auto Dismantlers, Inc. submitted an inaccurate, incomplete, and misleading FY 2004/05 annual monitoring report in violation of Monitoring Program and Reporting Requirement B.5.a. of Order No. 97-03-DWQ.

A.2.a. Nature, Circumstance, Extent and Gravity of the Violation

Active Auto Dismantlers, Inc. submitted the FY 2004/05 annual monitoring report on October 27, 2005. The report, signed by Paul H. Sweeney Sr., President, states that the facility was exempt from collecting and analyzing samples from two storm events because the facility participated in the California Auto Dismantlers Approved Group Monitoring Plan. In a telephone conversation with

Ms. Mickey Daggett, representative of the California Auto Dismantlers Association, Ms. Daggett advised the Regional Board that Active Auto Dismantlers, Inc. was not a participating member of the group during FY 2004/05.

Active Auto Dismantlers, Inc. used the blank report forms from FY 2003/04, provided by the California Auto Dismantlers Association, which were never submitted. The forms were altered to reflect FY 2004/05 rather than FY 2003/04, giving the false appearance that Active Auto Dismantlers, Inc. was still a member of the group. By signing the report, Mr. Sweeney certified that the information submitted in the report, under penalty of law, is, to the best of his knowledge and belief, true, accurate and complete and that he is aware there are significant penalties for submitting false information.

Since enrolling in the stormwater permit in 1998 Active Auto Dismantlers, Inc. has a poor record for taking stormwater samples. Only one sampling event has occurred at the facility since enrolling under the General Permit in 1998. In FY 1998/99, Active Auto Dismantlers, Inc. failed to take two required storm water samples and when confronted by the Regional Board, decided to join a group monitoring plan to avoid formal enforcement.

Active Auto Dismantlers, Inc.'s inadequate and misleading reporting and failure to sample storm water discharges circumvents the regulations and removes an effective mechanism to determine which best management practices should be employed at an industrial facility to reduce or prevent pollutants in storm water discharges.

A.2.b. Susceptibility to Cleanup and Abatement

This factor does not apply to this violation.

A.2.c. Degree of Toxicity

This factor does not apply to this violation.

A.2.d. The Ability to Pay and Ability to Continue in Business

See section A.1.d.

A.2.e. Voluntary Cleanup Efforts Undertaken

This factor does not apply to this violation.

A.2.f. Prior History of Violation

In addition to the NOV's mentioned in section A.1.f, the State Board issued an NOV to Active Auto Dismantlers, Inc. for failure to pay the FY 2004/05 annual fee. The fee was eventually paid. The Regional Board also issued an additional NOV on August 5, 2005 for failure to submit the FY 2004/05 annual report addressed in this violation. The FY 2004/05 annual report was submitted in November 2005, five months late.

A.1.g. Degree of Culpability

Active Auto Dismantlers, Inc. had submitted a Notice of Intent and participated in an approved Group Monitoring Plan since 1999, at which time they indicated that they joined the group to ensure their continued compliance.

Active Auto Dismantlers, Inc. not only failed to disclose that they discontinued participation in the group monitoring plan, they indicated, under penalty of law, that they continued to be a member of a group plan when they were not.

Active Auto Dismantlers, Inc. knowingly altered annual reporting forms provided by the group to submit the FY 2004/05 annual report in an attempt to appear to still be a member of the group. Rather than disclose that they failed to conduct required sampling, Mr. Sweeney knowingly falsified the reporting form and avoided the cost of group membership and of performing stormwater sampling.

A.1.h. Economic Benefit Resulting from the Violation

The Regional Board estimates that each of the two required sampling events would cost approximately \$500 dollars for sample collection, data analysis and report generation. Based on this information, it is estimated that Active Auto Dismantlers, Inc. realized an economic benefit of approximately \$1,000 for failing to sample in FY 2004/05.

Membership in the California Auto Dismantlers Group is approximately \$750 per year. In addition to conducting sampling, providing annual reporting forms, the group also conducts periodic comprehensive site inspections at member facilities.

A.1.i. Other Matters that Justice May Require

The Regional Board spent thirty staff hours investigating and processing the enforcement actions detailed in this reports. At a rate of \$90 per hour, total staff time is \$2,700.

5. CIVIL LIABILITY

Pursuant to CWC §13385, the maximum civil liability that the Regional Board may assess for the violations addressed in Complaint No. R9-2006-0048 is ten thousand dollars (\$10,000) per day of violation. CWC § 13385(e) requires that, when pursuing civil liability under CWC §13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation."

A.1. Active Auto Dismantlers, Inc. failed to submit the FY 2003/04 annual monitoring report in violation of Monitoring Program and Reporting Requirement Section B.14. of Order No. 97-03-DWQ

Proposed

Consideration of the factors described in CWC §13385(e) supports imposition of administrative civil liability in the amount of one thousand dollars (\$1,000) for failing to submit the FY 2003/04 annual monitoring report.

- A.2. Active Auto Dismantlers, Inc. submitted an inaccurate, incomplete and misleading FY 2004/05 annual monitoring report in violation of Monitoring Program and Reporting Requirement Section B.5.a. of Order No. 97-03-DWQ.**

Proposed

Consideration of the factors described in CWC section 13385(e) supports the imposition of administrative civil liability in the amount of one thousand dollars (\$1,000), an amount based on the economic benefit realized by the discharger by failing to sample storm water discharges during two rain events during the reporting period.

Active Auto Dismantlers, Inc.'s culpability in falsifying the FY 2004/05 annual monitoring report, in addition to its poor compliance history with regards to Order No. 97-03-DWQ supports the imposition of additional administrative civil liability in the amount of one thousand dollars (\$1,000) with regards to this violation.

The total proposed administrative civil liability for this violation is two thousand dollars (\$2,000).

6. TOTAL PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The total proposed administrative civil liability for the violations contained in Complaint No. R9-2006-0048 as discussed in this technical analysis is three thousand dollars (\$3,000).

